VI

THE MEDICO-LEGAL ASPECTS OF VENEREAL DISEASE

By Dr. W. D. R. THOMPSON

Discussion

The President said she was sure all members present had immensely enjoyed Dr. Thompson's paper; it had been put together with meticulous care, and contained much historical information. She feared that doctors often considered a good deal of privilege attached to their evidence, and thought that was a pity. Present to-night, too, was another barrister, Dr. Letitia Fairfield, and she was pleased to welcome that lady. It was hoped that Lord Atkin would have been present, but, unfortunately, he was ill.

Dr. Letitia Fairfield referred first to the able exposition of the law on the subject; Dr. Thompson had left his hearers in doubt as to what his own views were on certain points. One could only deduce that he was in favour of the law as it at present stood, but he would like to have full protection of the doctor in the witness-box. That view the speaker felt obliged to oppose. She thought there was some misunderstanding on the part of doctors generally as to what the obligation to disclose meant. The doctor brought into court to give evidence against his patient was not going to be asked about everything which had passed between them; he was only required to answer specific questions. The last thing a barrister would do was to ask questions the answers to which he had no previous idea of. She had heard Lord Atkin say in this connection that it was a nightmare for a barrister to be confronted by a hostile and reluctant witness when he did not know what that witness would say in court. An action arose because some individual had suffered some civil or criminal wrong, and the doctor would only be called if his evidence was thought essential to redress that wrong. The reason the legal profession was so anxious to retain their right was that situations arose in

which a party or witness committed perjury, and in support of that perjury was anxious that the law should seal the mouth of the only man whose evidence could be used against him. Doctors were not asked wantonly to betray patients' confidence, but to defeat perjury.

Another point raised was the fear of discovery through the public V.D. clinics. Her own view was that those clinics had been such a success largely because of the trust of patients suffering from those diseases that they would be adequately protected from gossip that really mattered. What proportion of absentees from the clinics stayed away because they feared divulgence in an action at law? A very small one, she considered. Was not the fear rather that of the news getting to the mother-in-law? This consideration was not likely to be a cause of patients resorting to chemists and quacks.

An important aspect was the production of vulvo-vaginitis in children. Not long ago she had to deal with some parents who were concerned in a small epidemic in a certain hospital. The parents of the affected children were interviewed by the medical superintendent and were told what had happened to their child. One of the fathers, when he was told, said: "Well, as long as I am not blamed I do not mind." From that and other comments it was obvious that he was too well familiar with the gonococcus and its habits, and his only concern was that he should not be involved in the matter. Within a few months that same man was doing his utmost to get enormous damages out of the hospital in question. It was possible that a parent who had infected or re-infected a child could obtain very large damages from a public authority for infecting his child, when at the same time he himself was attending a V.D. clinic. And if even the public authority subsidising the clinic knew the facts, they would be in a hopeless position in regard to resisting the claim. She did not think it could be said that the obligation on a doctor to give evidence, or the position of the patient, was a prejudice to any serious extent. She would be interested to know whether any case could be quoted in which injustice had been done by the present practice.

With regard to expert witnesses, one could give a number of stories about them. In this regard, however, she thought the legal profession was greatly to blame, if

they deliberately selected as their pet experts people who would say what they were required to. There were plenty of honest experts. The speaker thought the legal profession was guilty of much misunderstanding as to tests of cure and pathology. The trouble lay not with either the medical or the legal profession, but with the behaviour of the spirochæte and the gonococcus. When someone objected to Freud's sexual interpretation of dreams, the famous psychologist said: "I did not make mankind like that"; and doctors could say similarly: "We did not make the gonococcus and the spirochæte." Lawyers and practitioners were annoyed at their vagaries, but bacteria could not be tied down to any standardised line of conduct. All that could be done was to state the facts of the case as they were known at the present day. It was necessary to recognise the essential difficulty of giving a dogmatic answer to many questions regarding either of the main venereal diseases.

It was that same barrier which was the difficulty in another important aspect of the subject—which Dr. Thompson did not mention: the question of compulsory notification.

She had deliberately opened the discussion in a manner which she thought likely to accentuate differences and to express the contrary point of view from that in the paper. The whole question of the secrecy of the doctor's evidence and that of certainty of diagnosis in divorce and other cases was one which must, from its very nature, be full of difficulties. And being the victim of a venereal disease carried an imputation—whatever the laws and whatever the methods of dealing with it—an imputation differing from that in respect of any other disease. Hence in regard to it one could not get the same freedom from emotional affect, the same clear issues of justice, as in other kinds of case. Hence in that regard one must be continually living in a world of compromise.

Dr. Fairfield therefore put it to the meeting that, on the whole, justice was better served by having a definite understanding with one's patients, and that though there would be no lack of fulfilment of the Hippocratic Oath, if the patient's disease came into issue in a court of law, it might be necessary, if such patients denied the truth, for the doctor to tell it.

Colonel HARRISON congratulated Dr. Derwent Thomp-

son on his excellent paper. He said his remarks would have reference to the question of medical evidence in the case of a patient who has not consented to the evidence being given and the action is a civil one ; he did not think one could defend the proposition that medical evidence could be withheld in criminal proceedings.

Dr. Fairfield had expressed some disbelief that a knowledge that his disease might be disclosed in a court of law would deter a patient from attending a V.D. clinic. He felt sure that V.D. officers would support him in saying that in most patients the fear of their infection becoming known to anyone whatever was very real.

But he wished to speak chiefly about the possibility of medical evidence in questions of V.D. leading to entirely wrong conclusions. If he had understood Dr. Fairfield correctly, she had challenged them to produce a case in which justice had miscarried as a result of medical evidence, and he ventured to inflict on them the following actual case which he had previously reported in a paper read before the Medico-Legal Society in May, 1932 :—

A lady sued her husband for divorce on the grounds of adultery with a woman unknown, and the sole evidence was that of the medical man who had attended the respondent. After the usual protest against having to give evidence respecting his patient, he stated that on such and such a date the respondent consulted him on account of a profuse urethral discharge, with pain on urination, of two weeks' duration. The history prior to the commencement of this attack was that the patient had first contracted a venereal disease some years prior to marriage, but the evidence was not clear as to its nature. There had been various attacks of disease of the genital organs at intervals of a few years between the first attack and the date when the medical witness first saw the defendant. They might have been recurrences of the original infection, or fresh attacks for anything we know, because they were treated by doctors other than the one who gave evidence. This one stated that his diagnosis was acute gonorrhœa, and in answer to questions he stated that his opinion as to the attack being the result of a recent infection was based on the acuteness of the inflammation, the bacteriological reports that gonococci were present in the discharge, and the pain on urination. He did not consider the attack to be due to the lighting up

of an old infection contracted prior to marriage, because in this case none of these three signs would have been present. He had described himself as a specialist in these diseases, and at the conclusion of his evidence the counsel for the defence stated that, in view of it, he had advised his client, who did not admit adultery with anyone since marriage, that it would be useless his going into the witness-box. Accordingly a *decree nisi* was pronounced, a very serious matter for the respondent, considering his profession.

In this case he had no doubt that any good V.D. officer could have torn the medical evidence to shreds, and he did not believe that justice had been done. He could have challenged even the correctness of the diagnosis of gonorrhœa, since this rested on a microscopical test not carried out by the witness, and most V.D. officers know that other organisms can be mistaken for the gonococcus. He could certainly have challenged the statement that the attack was a fresh one, not a recurrence.

To turn to another point, in a marital infection it was often most difficult to say who infected whom because of the difficulty of fixing the date of the infection from the signs presented by the parties and, unless this fact was known, the medical evidence would carry undue weight. Altogether he agreed heartily with the proposition that in this question of compulsion of a doctor to give evidence against his patient in civil actions there was a case for revision of the law.

Mr. C. M. CASTLE (Solicitor) stressed the fact that in these matters one was obeying the law of the land. Parliament had made the laws, but Judges had their own way of interpreting them. Often it was a matter of rule-of-thumb, and it sometimes seemed that the laws were made or designed to put doctors into difficulties. His hearers had probably heard of the M'Naghten Case. A neurologist from Harley Street once gave evidence as to the condition of a man's mind who had committed a murder. The doctor, when asked: "Did this man know, when he hit him on the head, that it would kill him?" said: "Yes, but he was obeying a special call from God." The Judge's commentary was: "Thank God we take our law from the Statute Book, and not from Harley Street." For many years the law had kept back civilisation, almost as much as the Church had. Unless doctors

stood up for themselves on this question of privilege, it might be a serious matter. What was now being discussed was qualified privilege, *i.e.*, in order to get at the truth, one, unless he enjoyed absolute privilege, must disclose what knowledge he had. Doctors should be precluded from being compelled to give evidence of what had been confided to them.

Dr. BUCKLEY SHARP said Colonel Harrison had differentiated between evidence in a criminal action and evidence in a civil one, but the speaker did not know how one could make different rules. A civil action might be as important as a criminal one. But it did not often happen that a doctor was put into the awkward position of having to give evidence against his patient without that patient's consent. How did the doctor come into the case ? It was because the patient summoned him. For any other party to get to know essential facts it would be necessary to shadow the patient to the clinic, and even then it would be very difficult to get any useful information. He had not had experience in court in connection with V.D. cases, but he had been in court in other cases, and he found one could not produce a skiagram in court unless one had taken it oneself or was present when it was taken. (Dr. Fairfield : You can say your diagnosis is affected by the X-ray plate.) He was thinking of a physician in a V.D. clinic who was called to say what was the matter with a patient, and who could only state that there were symptoms which led him to think the patient was suffering from a form of venereal disease ; he could not include in his evidence what the pathologist found, or certify that the specimen reported on by the pathologist was the one he had taken from the patient in question.

He had been interested in the reference to the epidemic of vulvo-vaginitis which occurred in a hospital. In connection with that he was called upon by a solicitor who was acting for all the parents in the case. He told him that without full knowledge of the details he could give no opinion, and the matter dropped. He heard later that the claim was dismissed on a technicality.

He asked whether there was any criminal responsibility on a person who knowingly infected someone else with venereal disease ; was it an indictable offence ? Was it a felony or a misdemeanour ?

Dr. McELLIGOTT, referring to the remark as to the difficulty in getting a satisfactory medical witness from the clinic, said that if the head of the clinic was subpœnaed, he must bring with him the Register of the clinic. He had been subpœnaed by a man who thought he had syphilis, and believed that, if he had syphilis, he could not be father of a child ; an ingenious defence. The speaker was asked, when in the box, whether the man was a patient at his clinic, and his reply was that he did not know, as he had so many patients there, and those he remembered were known to him only by numbers. The case was adjourned, and when the next hearing took place, the speaker, armed with the Register, which he was directed to bring with him, was asked to verify whether the man in question attended the clinic. He refused to say, on the ground of public policy. The Stipendiary was disturbed, and asked whether he knew he could be committed. He replied that he was aware of it. The Stipendiary was not sure of his ground, and adjourned the case. Two weeks later he was informed that the case was coming on again, but he had influenza. At the next hearing the speaker was away on leave. On returning he was asked unofficially whether it would do the man any good if he gave evidence, and he replied that he could not say whether the man was attending the clinic, but that if he were to give evidence, his evidence would not benefit such a man. He heard nothing more about it.

A patient attending a clinic entered into a certain contract with the authorities, and if the man was injured in the clinic, the contract would apply. As matters stood he thought patients in clinics were led to enter into a contract by false representations by the advertisements of " absolute secrecy." The vast proportion would say this meant that the doctor's lips were sealed, even in a court of law. He thought that more publicity should be given to the fact that there was one condition under which the doctor could be forced to give away the case of the patient.

Dr. DOUGLAS CAMPBELL said that many children of school age came under the scope of the Venereal Diseases Departments through routine examination as the result of one or other parent being found syphilitic. As these children were primarily under the care of School Medical Officers, was it his duty to divulge to these Medical

Officers that the child, in most instances without gross stigmata showing, was actually syphilitic, the point at issue mainly being that the children were not referred in the first instance by that School Medical Officer ?

Dr. STODDART-SCOTT said that when a V.D. clinic was part of a large general hospital, patients were referred from other departments, where they had been sent by their doctors with a wrong diagnosis. Should the doctor be informed of the correct diagnosis in such cases ? Sometimes the diagnosis given was balanitis when it should be syphilis, and inguinal hernia when they were enlarged syphilitic glands.

He asked about the case of a doctor who was suspicious about his nursemaid who was also on his panel, as she had a medicine bottle bearing the name of an infirmary, and there were certain stains on her bed linen : also she was absent at certain times of the day. If she had venereal disease he wanted to get rid of her. Could the clinic give the doctor a report about his nursemaid panel patient ? In Birmingham, in 1932, there was a case in which a medical officer of a V.D. clinic was called before the Stipendiary to give evidence, and the doctor said that by giving evidence about a patient, he would lay himself open to prosecution, and so he would be incriminating himself. He was therefore allowed to withhold his evidence.

In attempting to cure the venereal diseases it was essential for the doctor to have the patient's confidence ; if important facts had to be given in a court of law it would do more harm than telling 250 mothers-in-law.

He would like to have emphasis brought to bear in any amending legislation to deal with defaulters at clinics. At the Leeds Clinic 10 per cent. were persistent defaulters. It was a great hardship on child patients whose parents ceased to bring them.

Dr. ORPWOOD PRICE admitted that even in the best organised laboratories one could not swear that specimens might not get mixed up. If one had a blood for a Wassermann test, the only way in which one could be certain that it was done on that particular blood was to be present when it was taken, and at every subsequent stage of the reaction. What usually happened was that a particular blood arrived with a hundred others, and some months later one was expected to swear that no possibility

of error could have arisen. Pathological evidence of serum tests would be much more valuable if the pathologist were called into consultation with the patient by the clinician, thus avoiding any discussion as to the origin of the specimens tested.

The PRESIDENT said that what had appealed to her during the discussion was that medical officers of V.D. clinics were not themselves wholly protected on this question of venereal disease, against claims which might be annoying, though legally they could not be substantiated. At her own clinic there were people bringing young girls who were either on the streets or were pregnant, and asking that they might be examined to exclude venereal disease, and they expected a report, following upon which they would take certain steps. She, Dr. Rorke, insisted on the girls signing a statement to the effect that they did not mind these workers knowing about it. Recently she had a case of sero-negative primary spirochæte positive syphilis diagnosed, in which the young woman became very abusive, and she said that if it would do any good she would report the speaker to the General Medical Council! The President's simplest plan would have been to take counsel of the General Medical Council or of a Medical Protection Society, but she had not time to go running round to tell the story. But in certain circumstances the medical officer was a cockshy with the immoral on account of the possibility of their taking a certain line of action.

The President expressed her own personal gratitude to Dr. Thompson for his paper, and asked him to reply.

Dr. DERWENT THOMPSON, in reply, thanked all the speakers for their kind remarks. What had struck him more than anything else when he undertook to produce this paper was, how amazingly little legal people knew about medicine, and how slight was the knowledge on law possessed by the average medical man. If one wrote to one's doctor and stated one had abdominal pain, that communication was privileged, and the doctor need not produce it in court unless the patient desired that he should do so. The legal position in regard to expert evidence was now rusty, it was about a hundred years old, and was in need of revision. It was set up before serological reactions had come into being. Those who were responsible for the laws of evidence being carried

out in courts might well have their attention drawn to this matter.

He had been much gratified to hear Colonel Harrison speak; much of the data he, the speaker, had used in his paper he was indebted to that gentleman for, especially his paper before the Medico-Legal Society. He did not doubt that there was a good deal of ignorance, both occult and patent, in the Divorce Court in relation to medical evidence. Mostly it was known what a witness would say in the box, as those who called the witness knew what he had been called for. The point had been raised regarding the Macnaughten Rule. Speaking from memory, it arose out of a case in 1843, in which somebody attempted to murder the Prime Minister and shot his secretary instead. The verdict was " Guilty but Insane." Public opinion at that time was against the decision, therefore the Judges got together and formulated the Macnaughten Rule.

His answer to the question whether anyone was liable to criminal proceedings for knowingly communicating venereal disease was No. In 1917 a Bill was introduced seeking to make such an offence indictable; it lapsed. If doctors communicated a diagnosis to each other it should be done in a letter marked " Private and confidential." That was in the best interests of the profession.

He did not know what to say about the case mentioned, in which there was a suspicion of venereal disease in a nursemaid.